

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

61194

FILE: B-186195

DATE: July 23, 1976

MATTER OF: Action Manufacturing Company

97870

DIGEST:

When bid contains two conflicting prices for same item, bid is ambiguous and must be evaluated based on higher price in order to avoid prejudice to other bidders.

Action Manufacturing Company (Action) has protested the proposed award to MBAssociates (MBA) of a contract for warheads under United States Army Armament Command, Rock Island, Illinois (Army), invitation for bids (IFB) DAAA09-76-B-0012. The IFB on page 17 included under Item 0001, Warhead, Component of TOW Missile, the following:

- Item 0001AA First Article Sample
- Item 0001AB Warhead
- Item 0001AC Warhead, Less Nose Crush Switch Assy.

It was clearly stated on page 17 that the first article sample requirement applied only to Item 0001AB. On page 16 of the IFB a blank was provided in which the bidder was to indicate by item a unit and total contract price which would prevail should the Government exercise its right to waive the first article requirement.

On the schedule of prices on page 17, MBA quoted the following:

<u>Item No.</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
0001AB	23,211	\$36.63	\$850,218.93
0001AC	3,500	\$18.85	\$ 65,975.00"

On page 16, wherein the bidder was to indicate prices which would become effective in the event that the Government waived the first article requirement, MBA's bid read as follows:

<u>Item No.</u>	<u>Unit Price</u>	<u>Total Amount</u>
0001AB	\$36.63	\$850,218.93
0001AC	\$18.85 <u>[s]</u>	\$ 65,975.00
	\$17.85--FM-----	\$ 62,475.00

In his evaluation of this bid, the contracting officer disregarded the \$18.85 price listed on the schedule, surmising that MBA must have meant the \$18.85 figure to apply only in the event a first article sample was required for Item 0001AC. Accordingly, the contracting officer has evaluated the bid on the basis of the \$17.85 sum. MBA's status as low bidder is dependent upon the use of the \$17.85 price; if the \$18.85 figure were used, Action would become the low bidder.

In this connection, MBA's counsel states that MBA "was fully aware that the first article sample was applicable to Item 0001AB only." Counsel points out that the 100 percent option on page 23 of the IFB applied only to Item 0001AB, not to 0001AC and that MBA bid a unit price of \$36.63 for Item 0001AB on both pages 16 and 17 in order to preserve this price in case the 100 percent option was exercised. Therefore, "(s)olely to protect its bid at \$36.63 for the option quantity, MBA elected to reduce the price at page 16 for Item 0001AC (not subject to the option) from \$18.85 to \$17.85."

Action contends that MBA's bid of \$17.85 may not be considered in the evaluation. We agree.

Although the Army insists that MBA must have intended the \$18.85 bid to apply only if a first article sample was required for Item 0001AC, the fact remains that no first article requirement exists for that item. Therefore, we believe it is more reasonable to interpret MBA's bid of \$18.85 as the intended price for Item 0001AC, without a first article sample, especially since MBA's counsel acknowledges that the \$18.85 price was not based upon furnishing a first article sample. Alternatively, we think the most that can be said about MBA's bid is that it is not clear from the bid itself which of the two prices submitted for Item 0001AC would govern in the event of an award. Our Office has consistently held that where, as here, a bid contains two or more conflicting prices, the bidder may not be permitted to choose after bid opening which price should govern the evaluation of its bid. See Rix Industries, B-184603, March 31, 1976, 76-1 CPD 210, wherein an agency correctly evaluated a bid containing conflicting prices on the basis of the higher prices. For, as we stated in 40 Comp. Gen. 393, 397 (1961):

"* * * where each of two possible meanings can be reached from the terms of a bid, the bidder should not be allowed to explain the meaning

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when he is in a position thereby to prejudice other bidders or to affect the responsiveness of his bid. Such action would serve to undermine the integrity of the bidding system and cause overall harm to the system of competitive bidding despite the immediate advantage gained by a lower price in the particular procurement."

Accordingly, we conclude that MBA's bid must be evaluated on the basis of the higher bid in order to avoid prejudice to the other bidders. In view of this conclusion, we need not consider Action's assertion that in any event it is entitled to an award for Item 0001AB.

The protest is sustained.


Deputy Comptroller General
of the United States